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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 224 (ALC)

5 ALI SADR HASHEMI NEJAD,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 16, 2018

11:18 a.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 MATTHEW LaROCHE

Assistant United States Attorney

18 GARRETT LYNCH

Special Assistant United States Attorney

19 BARUCH WEISS

20 ANDREW BAUER

TAL MACHNES

21 Attorneys for Defendant

22 ALSO PRESENT: MICHAEL URBANOWICZ, FBI

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(In open court)

(Case called)

MR. LAROCHE: Good morning, your Honor. Matt Laroche and Garrett Lynch for the government, and with us at counsel table is Mike Urbanowicz, a special agent with the FBI.

MR. WEISS: Good morning, your Honor. Baruch Weiss from Arnold and Porter for Mr. Sadr, along with Andrew Bauer and Tal Machnes.

THE COURT: Good morning. What is the status of this matter?

MR. LAROCHE: Yes, your Honor. We were last here on April 18th to discuss bail. There was extensive argument, and at the end of that bail proceeding, the Court had found that the government had established, at least initially, that the defendant was a risk of flight.

However, the Court also found that the current package that had been proposed was insufficient, and the Court requested additional information to determine whether there would be a package that would be permissible to the Court. The

Court specifically asked defense counsel to provide information on the defendant's financial circumstances, including the level of his assets, assets that were not subject to forfeiture in this case, assets that could be available to him through his family, and also additional information concerning the relationships with the cosigners that have been

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1 proposed and their assets.

2 Defense counsel responded at the time that they would
3 be putting in a submission, which they suggested would be
4 coming shortly after that conference, and anticipated coming
5 back sooner than this conference. It is our understanding,
6 based on discussions with defense counsel, that they have
7 retained forensic accountants as experts to analyze the
8 defendant's financial circumstances, and that they intend to
9 submit an additional submission to the Court in the coming days
10 and would like to request an additional date to discuss bail
11 after that.

12 I think, from the government's perspective, we are
13 requesting approximately one week to respond to that submission
14 in writing, and then would request an additional day from the
15 Court to set that down on the schedule. I know defense counsel
16 takes a different view. They'd like to come back to the Court,
17 I think, Wednesday or Thursday of next week. From the
18 government's perspective, that's just not enough time to
19 appropriately consider a submission that has taken, by our
20 understanding, multiple experts hundreds of hours of time to
21 come up with additional information for the Court's
22 consideration.

23 So I guess the parties are in a bit of disagreement on
24 this point right now. Defense would like to come back sometime
25 next week, after they've filed their submission, and the

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1 government would prefer coming back after its had an
2 opportunity to file a response.

3 THE COURT: Okay. Defense counsel?

4 MR. WEISS: Yes, your Honor.

5 THE COURT: Thank you.

6 MR. WEISS: We have been working very diligently since
7 the last pretrial conference or hearing that we had before you
8 with respect to the issue of bail, in order to thoroughly and
9 convincingly provide you with the information that you
10 requested that would then enable you to release Mr. Sadr on
11 bail.

12 Because of the financial nature of the number of the
13 questions that you posed, including what confidence could you
14 have that Mr. Sadr has disclosed all of his assets and doesn't
15 have other assets that he has not disclosed that might be
16 available to him; what assistance, financial assistance, could
17 he get from his family including the father, which if you'll
18 recall, there was some discussion as to the wealth and assets
19 available to the father.

20 We have retained a forensic accountant, somebody who
21 was a criminal IRS agent for 22 years and a CPA, and his staff,
22 to undertake a very, very comprehensive review of Mr. Sadr's
23 assets so that you can be comfortable in making your bail
24 decision that you have a full picture of what he does have and
25 what he doesn't have.

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1 They've also undertaken an analysis of the father and
2 what assets the father could put to use in facilitating the
3 flight that the government seems to be so concerned about.
4 We've also reached out to the cosigners, the proposed
5 cosigners, for them to supplement the submissions they made
6 until now to give you even more information about the sting
7 effect his flight would have, and that's two things.

8 They've given more financial information about
9 themselves; so that the Court could see, let's say, what
10 percentage of their assets, in many instances it's all of them,
11 they are ready to put up, and also, more information about the
12 relationship with Mr. Sadr; so the Court can see from that
13 perspective how unlikely it is that Mr. Sadr would flee and
14 leave these people behind, in many cases, homeless.

15 So we have worked very diligently on this since the
16 day that we left. It, obviously, has been a more complicated
17 process than we anticipated, but we are getting to the end, and
18 we are going to be submitting something to the Court addressing
19 these issues. We would like to ask the Court to set another
20 bail hearing next week. Mr. Sadr has been in jail since
21 March 18th, I believe, and that is quite a bit of time for
22 somebody who, in our view, we think should be released on bail.

23 We would like to submit the package beforehand,
24 obviously, so that the Court has a chance to review it, so that
25 the government has a chance to go through it. We'd like to go

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1 forward Wednesday of next week. I understand that although
2 next week is difficult for counsel for the government, Thursday
3 would be better for them than Wednesday. We're ready to
4 accommodate a day, but we don't want to put this off for weeks,
5 your Honor, and that's why we would ask for a date next week.

6 THE COURT: So I take it, from what you're saying,
7 that this forensic accounting has been completed, or it has not
8 yet been complete?

9 MR. WEISS: It's being completed, and let me explain,
10 your Honor. The government began this investigation about four
11 years ago and has been analyzing the financial records for
12 Mr. Sadr over the past four, four-and-a-half years. We and the
13 forensic accountant have been doing it for a few weeks, and
14 although the Court is primarily concerned with the financial
15 reach of our client, Mr. Sadr, now, the government in its
16 papers from the time and time again has said, judge, to
17 understand what he's got now, you have to look back to 2013,
18 2010, 2008. Because if they had a lot of assets then and
19 they're not appearing on this statement now, there must be
20 some.

21 So although this is ostensibly an audit of what he has
22 now, by virtue of the argument that the government has made,
23 this has become a review of the financial situation going back
24 many, many years. The documents that we've got from the
25 government on this, is staggering, the amount of information

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1 they've given us.

2 A thorough forensic accountant could keep going and
3 going and going and look at every entry. We're ready to put --
4 we think we're at a place that, for bail purposes, we can wind
5 this up. So that's why I'm answering the question, has he
6 completed his work? This is one of those tasks when the date
7 comes, he will finish.

8 THE COURT: Okay. Well, my concern is if it hasn't
9 been completed yet -- today is Wednesday, the 16th -- I'm not
10 sure how soon you'd be able to get this information to the
11 government. I do think the government has a right to see this
12 information and review this information --

13 MR. WEISS: Of course.

14 THE COURT: -- and respond to the information, and I
15 certainly would like to look at the information from the
16 defense perspective, as well as what the government says in
17 response. So realistically, I don't see how this can happen by
18 a week from today because the documents haven't even been
19 turned over to the government yet.

20 MR. WEISS: Your Honor, I'm sorry for interrupting,
21 but if we would undertake to get it filed by Friday, would that
22 enable this to happen next week? Today is Wednesday. Yes,
23 Friday, two days hence.

24 THE COURT: Do you have a sense of how lengthy these
25 documents are? Because the difference is your forensic

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1 accountants have been working on this. They're going to give
2 you these documents that you are simply going to then give to
3 the government, and the government is going to have to start
4 this process of going through all of that.

5 It seems to me that it may take them some time to go
6 through that. Do you have a sense as to how lengthy these
7 documents will be? I mean, it seems that -- I'm not sure that
8 the government can adequately respond to that in a day or two.

9 MR. WEISS: Well, the vast majority of documents that
10 the expert relies on are documents that we got from the
11 government as part of discovery, that they have been analyzing
12 and reviewing for years. So the task of review -- and the
13 government, by the way, in the bail proceeding, has
14 demonstrated a very good, strong familiarity with the financial
15 documents. They've been plucking out a document from here and
16 a statement from there, and an F part from here.

17 So I think that what's going to be important here is
18 more the analysis, as opposed to the underlying documents,
19 which they have. And the report -- the report itself will
20 contain that analysis, and the report itself will be in the
21 vicinity of 25 pages.

22 THE COURT: Okay. But it seems to me that counsel for
23 the government, I'm sure they're extremely talented, but
24 they're probably going to need to have their own expert look at
25 this. I don't know if counsel for the government -- well, let

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1 me not put words in the government's mouth. Does the
2 government have an expert ready on retainer to look at whatever
3 you get from the defense?

4 MR. LAROCHE: If we needed to, we could, your Honor.
5 It's not our intention to use an expert in response. That
6 said, it sounds like whatever they're going to give us is a
7 complicated analysis that is done by an expert and will likely
8 take more than a weekend to go through and come up with a
9 reasonable response that the Court could then consider in
10 advance of Wednesday.

11 MR. WEISS: Your Honor, I might say that the -- if it
12 helps, the expert will confirm what we've already told the
13 Court, which is that the assets that the defense, that Mr. Sadr
14 has disclosed of his assets and that he doesn't have, contrary
15 to the claims that the government's made, these hidden hoards
16 of wealth scattered about the globe; so in other words, it's
17 confirmatory. It's not something brand new is what I'm saying.

18 THE COURT: Okay.

19 MR. WEISS: It's confirmatory of the position that --

20 THE COURT: I would have assumed that if you were
21 hiring an expert, the expert wasn't going to be preparing a
22 report that was different than what your position is, in terms
23 of his wealth. My assumption is that you weren't going to have
24 an expert prepare a report that contradicted your position and
25 indicated that he has vast sums of wealth available to him.

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1 That's just going out on a limb. That's kind of what I thought
2 the report would say.

3 MR. WEISS: If it had said something like that, we
4 wouldn't be submitting the report, of course.

5 THE COURT: Correct.

6 MR. WEISS: But as the Court has said, we have given
7 the expert full reign. We said what documents do you want to
8 see? Who do you want to speak to? Anybody you want to
9 interview, we'll give you free access to. I should add even
10 Mr. Sadr himself. Many defense attorneys might not have let an
11 expert interview the defendant himself in a criminal case, but
12 we've made the father available by phone for interviews, as
13 necessary, and Mr. Sadr.

14 So it's a pretty comprehensive report and a pretty
15 comprehensive exercise, both from the document perspective and
16 from the interview perspective. Yes, of course, your Honor, if
17 we had gotten a negative result, we'd be remiss in our
18 obligation to the client to submit it, but it doesn't mean it's
19 not accurate, as I hope you would see.

20 THE COURT: Okay. And is it safe to assume that
21 whenever we schedule the next bail hearing, this is going to be
22 another bail hearing that will take a couple of hours?

23 MR. WEISS: Can I have just one second? I think
24 that's right, but just give me one moment.

25 (Pause)

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1 I would guess a couple of hours, an hour-and-a-half or
2 two hours, your Honor. That's asking me a little bit to
3 anticipate which precise portions of the report the government
4 will object to and, of course, the government hasn't seen it;
5 so they can't quite anticipate that, I understand. But I would
6 say, yes, a couple of hours.

7 THE COURT: Yes, counsel?

8 MR. LAROCHE: Thank you, your Honor. Just a couple
9 other points. So part of the problem with responding on such a
10 quick time frame, that we would have something back by early
11 next week, is that one of the prosecutors is gone for the next
12 ten days on planned travel for work. I'm going to be traveling
13 the first few days of next week on planned travel for work and
14 next Friday. So there are some logistical issues that would,
15 in our view, prevent a quicker turn around response.

16 And the second point, it sounds like although they are
17 relying on at least some of our documentation, that there will
18 be new information that they've pulled together for this report
19 that the government would, obviously, like an opportunity to be
20 able to analyze and respond to. I think a week is a reasonable
21 period of time for the government to put this together and
22 respond to that, and then the Court -- we could come back to
23 the Court as soon as possible after that.

24 THE COURT: Okay.

25 MR. WEISS: Your Honor, I would point out there are

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1 three prosecutors on this team, and this is a matter of bail
2 and liberty. The only reason we've taken this long is because
3 we're brand new to the case and haven't had the years and years
4 and years the government has had to learn the case. I think
5 it's appropriate to push the government to respond so that we
6 can have this bail hearing.

7 THE COURT: Well, we had calendared this case today
8 for the possibility of the bail hearing, and the last time we
9 were here, defense counsel indicated you'd be sending me
10 something quickly.

11 MR. WEISS: I did.

12 THE COURT: That didn't happen. I'm not saying that
13 that's your fault, but that didn't happen. It seems that it
14 would be unfair to the government to ask them to respond to
15 this submission within a couple of days.

16 The week of May 29th I have a trial starting then; so
17 it's going to be difficult for me to block out a couple of
18 hours to deal with the bail hearing. So it seems to me that
19 what makes sense is for me to refer this to the duty magistrate
20 judge, and you can take this up with the duty magistrate judge,
21 again with the caveat -- I don't want to set the magistrate
22 judge's calendar, but it does seem to me that the government
23 should get -- or it seem to me the government needs to get at
24 least four business days to respond to the submission whenever
25 you give them this submission. So if you give it to them

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1 Friday, they need to be able to have at least --

2 MR. WEISS: Your Honor, we'll get it tomorrow. We'll
3 work through the night tonight, and we'll get it tomorrow, if
4 that will help this process.

5 THE COURT: But I would say that the government gets
6 four business days from the time that they receive the
7 submission to respond, and you would need to give the
8 magistrate judge some notice of this, instead of having the
9 magistrate judge having to deal with this on the fly with all
10 of this complicated financial -- or even if it's not that
11 complicated, with all of this financial information in that.

12 But let me hear from defense counsel and the
13 government. To me, that seems to make the most sense, unless
14 you want to wait for me later on in June, but to me, that seems
15 to make the most sense. I understand defense counsel saying
16 there's some urgency to it.

17 MR. WEISS: Yes, the urgency is obvious. We have a
18 client that's retained, who we want released. Everybody
19 understands that. If we get it done tomorrow, that would give
20 the government Friday, Monday, Tuesday and Wednesday, four
21 business days, and then if we could have the hearing on
22 Thursday before you. You've learned a lot about this case
23 already, and I think there's a -- and you're going to be the
24 presiding judge; so we think it should be before you. All
25 right. I understand that 2:00 p.m. might be available on

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1 Thursday for the Court.

2 THE COURT: Not if it's going to take two hours. We
3 could probably do it -- well, let me find out. What's the
4 government's take on this? I do have availability on Thursday
5 starting at 1:00.

6 MR. LAROCHE: I know my schedule, I have a sentencing
7 on Thursday afternoon, I believe starting at 3:30, that I have
8 to be at. It's going to be long.

9 THE COURT: We could actually start it earlier. We'll
10 have to make some accommodations and maybe switch court
11 reporters so the court reporter could get some lunch. We could
12 actually start at 12:30 on Thursday.

13 MR. LAROCHE: The government can make that work, your
14 Honor. I think, from our perspective, we'd still like
15 additional time. You know, we're requesting a week here. Even
16 if we get it tomorrow, we assume it will be midnight tomorrow.
17 It doesn't give us a terribly long amount of time to respond to
18 what sounds like a pretty extensive submission. That said, we
19 will make whatever schedule work that the Court prefers.

20 THE COURT: Okay. Let's have defense counsel then get
21 this submission to the government by 5:00 p.m. tomorrow.

22 MR. WEISS: Yes, your Honor.

23 THE COURT: And the government needs to submit its
24 response by 5:00 p.m. on May 23rd, and then let's schedule the
25 bail hearing for 12:30. I think we have time then, Tara; is

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1 that right?

2 THE DEPUTY CLERK: Yes, Judge.

3 THE COURT: 12:30 on May 24th.

4 MR. WEISS: Thank you, your Honor.

5 MR. LAROCHE: Yes, your Honor.

6 THE COURT: Okay. Let me propose this. We'll
7 calendar this for May 24th at 12:30. It may make sense to set
8 another date after that for a status conference, in case
9 something falls apart and the report doesn't get submitted and
10 some other things take more time, just so that we have another
11 date, but let me find out what the parties' view on that is.

12 If we have that date, again, we'll have that on the
13 calendar. It may make sense to set a date later on in June,
14 just as a status conference date, have that on the calendar in
15 case, again, due to the complications in getting this report,
16 it doesn't get done in time so that we have another date on the
17 calendar. What's counsels' view on that?

18 MR. LAROCHE: That makes sense, your Honor.

19 MR. WEISS: I totally agree, and your Honor, if we
20 dispose of bail next week, there are going to be then other
21 issues that come up to discuss at the next status conference;
22 so I think for many reasons we would support that.

23 THE COURT: Okay. How about June the 20th at 3:00?
24 Does that date and time work for everyone?

25 MR. LAROCHE: That's fine, your Honor. Thank you.

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1 MR. WEISS: Fine for the defense, your Honor.
2 June 20th, 3:00.

3 THE COURT: All right. So let's set a status date for
4 June the 20th at 3:00.

5 Based on the complicated nature of the discovery that
6 is being produced and has been produced in this case, I find
7 it's in the interest of justice and in the interest of the
8 defendant to exclude time under the Speedy Trial Act from
9 today's date until June 20th.

10 I further find that the interests of justice and the
11 interests of the defendant outweigh the public's interest in a
12 speedy trial, and I will enter an order to that effect. Again,
13 we do have a bail hearing date set for May the 24th.

14 Anything else from the government?

15 MR. LAROCHE: No. Thank you, your Honor.

16 THE COURT: Anything's else from the defense?

17 MR. WEISS: No. Thank you for setting it for next
18 week, your Honor.

19 THE COURT: Now, counsel, you indicated that you're
20 going to be giving them this expert report. You also mentioned
21 something about getting further affidavits from the potential
22 suretors?

23 MR. WEISS: Yes, that will be part of what they'll get
24 as part of this package.

25 THE COURT: All right. Make sure that's turned over

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1 tomorrow also by 5:00.

2 MR. WEISS: Yes.

3 THE COURT: Okay. We're adjourned.

4 MR. WEISS: Your Honor, they may be letters, as
5 opposed to affidavits, but they will get them tomorrow.

6 THE COURT: Okay. All right.

7 (Pause)

8 THE COURT: Here's the only thing I wanted to discuss
9 with counsel. Is Mr. Sadr already in the back, or has he been
10 taken down?

11 MR. BAUER: I think they brought him down on the
12 elevator already.

13 THE COURT: Okay.

14 MR. BAUER: He's gone, your Honor. I can go down and
15 try and get him.

16 THE COURT: I don't think we need to do that. I just
17 wanted to ask counsel a question about the sort of discovery
18 that will be produced in this case. That's the last thing I
19 wanted to talk about. It has nothing to do with the bail
20 hearing.

21 MR. LAROCHE: Sure.

22 THE COURT: So knowing that, are you willing to waive
23 Mr. Sadr's appearance for this?

24 MR. WEISS: For discovery purposes, yes.

25 THE COURT: My only question is, I have a law clerk

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1 who's going to be working on this case with me. I wanted to
2 find out if there's going to be any sort of classified
3 information or anything like that so that we can start the
4 process, if I need to, of getting my law clerk security
5 clearance, if we need to do that. I haven't heard anything
6 about that yet. Because of the nature of the case, I figured
7 I'd make that inquiry now. Counsel for the government?

8 MR. LAROCHE: Understood, your Honor. We do not
9 anticipate any classified discovery or any SIPA litigation in
10 this case.

11 THE COURT: Okay. All right. That's it. We're
12 adjourned.

13 MR. WEISS: Thank you.

14 THE COURT: Thank you.

15 MR. BAUER: Thank you, your Honor.

16 (Adjourned)
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